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March 4, 2024

VIA ECF and EMAIL

Hon. Judith C. McCarthy, U.S.M.J.
The Hon. Charles L. Brieant Jr.
United States Courthouse
300 Quarropas St.
White Plains, New York 10601-4150

Re: *Baker v. Powell, et al.*, Case No. 7:23-CV-01626 (KMK)(JCM)

Dear Magistrate Judge McCarthy:

Seiden Law LLP (“Seiden Law”) and Prisoners Legal Services of New York (“PLS”) represent plaintiff Kristine Baker (“Plaintiff”) in the above-referenced matter (“Action”). With the consent of the undersigned counsel for defendants Raldino Powell (“Defendant Powell”), Ellen Gomprecht (“Defendant Gomprecht”), and Amy Lamanna (“Defendant Lamanna”; all defendants together, “Defendants”; and together with Plaintiff (the “Parties”), the Parties write jointly to update the Court on the status of discovery and Defendants’ outstanding document production.

On February 27, 2024, Plaintiff’s counsel provided Defendants with a list of over 80 outstanding documents, including specific deficiencies identified from their initial productions (some that had been objected to) and categories of requested documents that have not yet been produced (involving requests for discovery made by Plaintiff in her initial requests and subsequently). On February 29, 2024, the Parties met and conferred to discuss Defendants’ outstanding search term hit reports and document production pursuant to the Court’s directive during the February 23, 2024 status conference. During this meeting, Plaintiff was informed that Defendant Powell intends to serve a hit report of Plaintiff’s proposed search terms and produce any responsive documents by March 7, 2024. In regard to DOCCS records, the Office of the Attorney General (“OAG”) confirmed that it will continue to work with DOCCS Office of Counsel to determine a date by which a comprehensive hit report of Plaintiff’s proposed search terms will be produced. Additionally, OAG anticipates providing Plaintiff with any objections to Plaintiff’s February 27, 2024 list of outstanding documents early this week and to begin producing documents this week on a rolling basis. The Parties agreed to meet and confer regarding any remaining substantive discovery disputes on March 7, 2024 at 10 a.m.

In an effort to comply with the Case Management and Scheduling Order, as extended by Judge Karas on December 15, 2023 (the “Scheduling Order”), Plaintiff proposed the following deposition schedule for non-party depositions: (1) NYSDOCCS Associate Commissioner Jason Effman for March 15, 2024 at 2 p.m.¹; (2) Associate Psychologist NYS Office of Mental Health

¹ The Office of the Attorney General has indicated that it is likely it will move to quash the subpoena served on Associate Commissioner Effman. Plaintiff has understood from OAG that Assistant Deputy Superintendent Velez is qualified to speak regarding PREA-related questions and information. Accordingly, Plaintiff is prepared to proceed initially, on a conditional basis, with the deposition of Assistant Deputy

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for March 19, 2024 at 10 a.m.; (3) Assistant Deputy Superintendent Elizabeth Maldonado for March 20, 2024 at 10 a.m.; (4) Assistant Deputy Superintendent Elaine Velez for March 27, 2024 at 10 a.m.; (5) OSI Director of Operations Christian Nunez for April 10, 2024 at 10 a.m.; and, (6) OSI investigator Zachary Thornton for April 11, 2024 at 10 a.m.. However, counsel for Defendant Powell indicated today that he is not available on March 15, March 19, March 20, and April 11 and has stated he is available on April 18, April 19, April 22, and April 25 instead (each of these dates is beyond the current fact discovery deadline). Counsel for Defendants Gomprecht and Lamanna indicated that he is not available on March 15, March 27, April 10, and April 11 and has not yet provided alternative dates and times. As the Court is aware, the Parties have also agreed to a deposition schedule for Defendants, including the deposition of Defendant Powell on March 26, 2024 at 10 a.m., Defendant Gomprecht on April 3, 2024 at 10 a.m., and Defendant Lamanna on April 4, 2024 at 10 a.m.. The Parties have also agreed to conduct Plaintiff's deposition on April 9, 2024.

With significant document production outstanding, ongoing negotiations regarding Plaintiff's proposed search terms, and the lack of availability of Defendants' counsels on Plaintiff's proposed dates for nonparty depositions, it is most likely that Plaintiff will not be in receipt of completed (or substantive) document production prior to the commencement of depositions and that nonparty depositions will not be able to be completed prior to the close of fact discovery. This prejudices Plaintiff as Plaintiff obviously does not want to proceed with depositions without the benefit of document production. Accordingly, Plaintiff anticipates the need for the Parties to request from Judge Karas an additional extension to the discovery deadlines set forth in the Scheduling Order.

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Superintendent Velez in lieu of Associate Commissioner Effman (regarding PREA-related questions and information) and reserves the right to depose Associate Commissioner Effman, if it proves to be necessary.

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